

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DARRIN LAPINE,

Plaintiff,

v.

Case No. 2:09-cv-214
HON. R. ALLAN EDGAR

PATRICIA CARUSO, et al.,

Defendants.

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REPORT AND RECOMMENDATION

Defendants filed a motion to dismiss in this matter, seeking dismissal of this case for plaintiff's refusal to attend his deposition. A hearing was held before the undersigned on June 26, 2012. Plaintiff attended the hearing in person and counsel for defendants appeared by telephone. The testimony at the hearing established that plaintiff received notice of the deposition, and at the day and time of the scheduled deposition, plaintiff refused to participate in the deposition. On the record, and by separate order of this date, plaintiff has been ordered to participate in his deposition to be scheduled by the defendants. In addition, plaintiff has been sanctioned in the amount of \$252.80 for his failure to participate in the deposition.

The undersigned concludes that dismissal of this case is inappropriate. Accordingly, it is recommended that defendants' motion to dismiss (Docket #128) be DENIED.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within fourteen (14) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich.

LCivR 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal.

United States v. Walters, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: June 28, 2012